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PATENT
514413-3900

0300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Schewe et al

U.S. Serial No. : 10/038,224

For : MONOCOTYLEDON PLANT CELLS AND PLANTS WHICH
SYNTHESISE MODIFIED STARCH

Filing Date : October 19, 2001

Group Art
Unit : TBA

Confirmation
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New York, NY 10151

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**COMMUNICATION IN RESPONSE TO THE NOTICE OF INCOMPLETE REPLY
AND REQUEST FOR EXTENSION OF TIME**

Assistant Commissioner for Patents
Washington, D.C. 20231

This is in response to the Notice of Incomplete Reply (Nonprovisional) mailed May 31, 2002 ("second Notice"), which maintains the term for reply as originally set forth in the Notice

to File Missing Parts, mailed February 12, 2002 (second Notice), having a two-month period for reply, that states that the Communication, filed April 12, 2002, is incomplete since the Declaration was not executed by all of the inventors; i.e., inventors Ursula Uwer and Claus Frohberg did not sign the Declaration. Applicants urge that the Communication was a complete response to the original Notice as Drs. Uwer and Frohberg are not inventors of the application and, hence, the Declaration cannot contain their signatures. Applicants further request that the application be forwarded to the examining corps for an examination on the merits.

As the Communication was a complete response to the original Notice, it is further urged that the second Notice was issued in error and that a time extension fee is not due. If, however, the Assistant Commissioner decides otherwise, he is hereby authorized to charge the time extension fee and any additionally required fee, or credit any overpayment in fees, to Deposit Account No. 50-0320.

If this paper needs to be in the form of a petition, then it is requested that it be treated as such.

FACTS

The application was filed on October 19, 2001 and listed nine inventors, including Drs. Uwer and Frohberg. The application was filed pursuant to 37 CFR 1.53(f) since the inventors had not executed a Declaration; i.e., the application was filed "without signatures."

On December 11, 2001, the client informed the undersigned that listing Drs. Uwer and Frohberg as inventors was in error and made without deceptive intent.

On February 12, 2002, the USPTO issued the original Notice, which provided Applicants two months to supply an executed declaration. On April 12, 2002 Applicants filed the Communication, which enclosed the Declaration executed by all the originally listed inventors

with the exception of Drs Uwer and Frohberg, who were intentionally omitted since they are not inventors of this application.

On May 31, 2002 Applicants received the second Notice, which required that the Declaration be executed by Drs. Uwer and Frohberg.

DISCUSSION

Applicants respectfully urge that the issuance of the second Notice is in error and that the application should have been accepted as complete once the Communication was filed. MPEP 201.01 states that

[w]here the first-filed executed oath or declaration was filed on or after December 1, 1997 and sets forth an inventive entity which is different from the inventive entity initially set forth at the time of filing of the application, the actual inventorship of the application will be taken from the **executed oath or declaration**. See 37 CFR 1.41(a)(1). A request under 37 CFR 1.48(a) **will not be necessary**. See 37 CFR 1.48(f). (Emphasis added).

In view of the foregoing, it is respectfully submitted that the Communication was fully compliant with Federal Regulations and that the second Notice was issued in error since the USPTO should have taken the actual inventorship of the application from the executed Declaration, which was enclosed with the Communication. Moreover, since the second Notice was issued in error, it is urged that no time extension fees are required since the Communication completely responded to the original Notice.

CONCLUSION

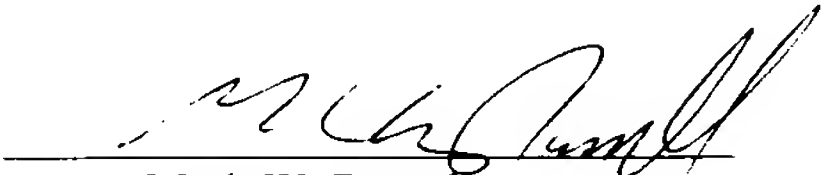
In view of the foregoing, it is respectfully requested that the inventorship of the application be amended to delete Ursula Uwer and Claus Frohberg as inventors of the present application and that the application be considered as complete as of April 12, 2002.

Reconsideration and withdrawal of the Notice of Incomplete Reply is earnestly solicited.

Respectfully submitted,

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Enclosures: Copy of Notice of Incomplete Reply